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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,665	05/18/2001	Robert Cosmo Di Luccio	KCC-15,512	3343

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/28/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,665

Applicant(s)

LUCCIO ET AL.

Examiner

Jamisia A. Webb

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-50 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-25 and 27-48 is/are rejected.
- 7) ☒ Claim(s) 26, 49 and 50 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9, 27-31 and 45-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. With respect to Claim 9: the phrase "a plurality of polymeric fibers comprising said nonwoven web material" is indefinite. How can fibers comprise a web material, the web material is made of nonwoven fibers, therefore the web material comprises fibers. It is unclear to the examiner how the part (fibers) can comprise the whole (web material).
4. With respect to Claim 27: the phrase "disposed at least one of on and within at least a portion of at least one of said fluid permeable cover, said absorbent layer and said fluid impervious baffle" is indefinite. It is unclear what the phrase "at least one of on and within is referring to, does this mean the treatment chemistry is disposed either on or within at least a portion of..."?
5. Claim 45 recites the limitation "said at least one treatment agent" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1-3, 5, 6, 8, 9, 14-16, 18-21, 27, 32, 38-40, 44 and 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Gagliardi et al. (6,245,693).

8. With respect to Claims 1, 2, 5, 15, 21, 27, 32 and 46: Gagliardi discloses the use of an absorbent structure (14) which can be incorporated into a sanitary napkin (column 7, lines 32-37) and contains a treatment chemistry such as crosslinked gelling material (26) which functions to absorb menses, control pH, and reduce odor. It is the examiner's position that the superabsorbent will also function as a thickening agent.

9. With respect to Claims 3 and 16: See Gagliardi Column 10, lines 17-26.

10. With respect to Claims 6, 44, 47 and 48: See Gagliardi Figures 1 and 2.

11. With respect to Claims 8, 9 and 14: See Gagliardi column 7, lines 38-52.

12. With respect to Claims 18-20 and 38-40. See Figures 1 and 2, and column 7, lines 38-67.

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13. Claims 1-6, 8-12, 15-17, 21-25, 27-37, 41, 43, 44, 46-48 are rejected under 35

U.S.C. 102(b) as being anticipated by Tanzer et al. (5,782,819).

14. With respect to Claims 1, 2, 4, 5, 15, 17, 21, 27, 28, 30, 32, 35, 41 and 46: Tanzer discloses the use of an absorbent article with a topsheet, backsheet and core (See all figures), which can be employed as a sanitary napkin (column 2, lines 55-58). Tanzer discloses the core containing a superabsorbent and a chitosan, which is a cross-linking felling agent (column 7, lines 44-67, and column 8 lines 8-42).

15. With respect to Claims 3 and 16: See Tanzer Column 8, lines 47-53.

16. With respect to Claims 6, 44, 47 and 48: Tanzer discloses the superabsorbent being located through the core, which the examiner considers to be along the periphery and at the center of the core (column 7, lines 51-53).

17. With respect to Claims 8, 9, 22 and 36: See Tanzer Column 7, lines 47-53.

18. With respect to Claim 10: See Tanzer column 7, lines 54-67.

19. With respect to Claims 11, 24, 25, 29, 33 and 34: Tanzer discloses the mixture of different superabsorbents, one being chitosan (column 8, lines 5-42).

20. With respect to Claims 12, 23, 31, and 37: Tanzer discloses the use of meltblown fibrous nonwoven web (column 7, lines 4-51).

21. With respect to Claim 43: The claim is anticipated by the Tanzer reference, due to the fact that claim 43 does not recite or require the treatment chemistry to be a mucolytic agent. Tanzer discloses the use of a cross-linking gelling agent, which meets the limitations of the Markush group of Claim 32, as well as anticipates Claim 43.

Claim Rejections - 35 USC § 103

22. Claims 13 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al. in view of Beihoffer et al. (6,159,591).

23. Tanzer, as disclosed above for claims 1 and 32, disclose the use of superabsorbents which are crosslinking gelling agents and can act as thickening agents, but fails to disclose the use of a multi-component fiber. Beihoffer discloses the use of a multi-component superabsorbent fiber that can be used for sanitary purposes (column 1, lines 12-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the superabsorbent particle of Tanzer, be replaced by the multi-component superabsorbent particles of Beihoffer in order to provide a superabsorbent particle that has a high absorption rate, good permeability and gel strength, overcomes the salt poisoning effect, and demonstrates and improved ability to absorb and retain liquids such as blood urine and menses. (See Beihoffer, columns 4 and 5)

Allowable Subject Matter

24. Claim 45 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

25. Claims 26, 49 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

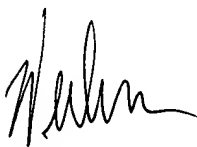
26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tanzer et al. (5,542,333 and 5,634,380), Andersson (4,363,322) and Guarrachino et al. (6,080,908) disclose odor control material located within the core, Brecher (4,790,836) discloses medicated powder on the topsheet of an article and DiPalma (6,479,728) discloses the use of lysing agents.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw 
March 24, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
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